

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

ALEX BORGES, JR., et al.,

Appellants,

v.

MISSOURI PUBLIC ENTITY RISK MANAGEMENT FUND (MOPERM),

Respondent.

DOCKET NUMBER WD73446

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: January 31, 2012

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Judge

JUDGES

Division Three: Mitchell, P.J., and Smart and Witt, JJ.

CONCURRING.

ATTORNEYS

Robert Herman
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Attorney for Appellants,

Marshall V. Wilson and Michael G. Berry
Jefferson City, MO

Attorneys for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

ALEX BORGES, JR., et al.,)	
)	
Appellants,)	
v.)	OPINION FILED:
)	January 31, 2012
MISSOURI PUBLIC ENTITY RISK)	
MANAGEMENT FUND (MOPERM),)	
)	
Respondent.)	

WD73446

Cole County

Before Division Three Judges: Karen King Mitchell, Presiding Judge, and
James M. Smart, Jr., and Gary D. Witt, Judges

The appellants filed a declaratory judgment action, alleging that the respondent, Missouri Public Entity Risk Management Fund ("Fund"), failed to follow proper rulemaking procedures when establishing coverage exclusions, which, if effective, would deny Fund coverage to two cities, which were Fund participants, for the appellants' tort claims against those cities. The circuit court entered summary judgment in favor of the Fund, finding that the appellants lacked standing.

AFFIRMED IN PART; JUDGMENT ENTERED PURSUANT TO RULE 84.14.

Division Three holds:

The appellants lack standing under section 536.150 because they had no judicially recognized interest in the agency's decision. The appellants also lack standing under the Declaratory Judgment Act because they have no legally protectable interest insofar as there is no justiciable controversy. The Fund has not yet denied coverage to the participants the appellants have filed claims against, and the appellants' claims against the participants have not yet been reduced to a judgment. Consequently, the appellants have no legally cognizable interest as a stranger to the insurance contract between the Fund and its participants. The trial court's finding that appellants lack standing is affirmed.

Given the fact that the appellants lacked standing, the trial court did not have the authority to render a decision on the merits of the action through summary judgment. We enter the judgment the trial court should have entered: dismissal without prejudice.

Opinion by: Karen King Mitchell, Presiding Judge

January 31, 2012

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